

0660-0166-0X CONT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
THERESA TERNYNCK ET AL : ATTN: PETITIONS OFFICE
SERIAL NO: 09/497,997 :
FILED: FEBRUARY 4, 2000 :
FOR: VECTORS DERIVED FROM :
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PETITION UNDER 37 CFR 1.137(B)

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

Applicants request revival of the above-identified application, which was abandoned for failure to timely file a response to the Official Action of August 31, 2001. A complete response to the Official Action is attached.

At the outset, Applicants wish to thank Beth Dayoan in the Petitions Office for the helpful guidance provided to Applicants undersigned representative regarding this application.

On August 23, 2001, a first Official Action on the merits was issued in this application (Paper No. 14). However, due to a deficiency of this Office Action, the Office issued a second Official Action (Paper No. 16) on August 31, 2001, which replaced the first Official Action and reset the period for response.

On January 31, 2002, five months after the Official Action dated August 31, 2001

was mailed, the undersigned filed a Notice of Appeal to maintain pendency while an

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appropriate response was being prepared. The Notice of Appeal was filed based on the understanding of the undersigned that two Office Actions had been mailed, which therefore afforded the Applicants the option of filing a Notice of Appeal in view of 37 CFR 1.191, which states, in part: “. . .whose claims have been twice . . . rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee . . .”

Upon filing the Notice of Appeal, the undersigned believed that Applicants now had until March 31, 2002 to file an appropriate reply to the Official Action.

On March 4, 2002, the undersigned discussed this issue with Supervisory Patent Examiner James Housel and Examiner Stacy Brown, to ascertain whether, in fact, the filing of the Notice of Appeal was proper and whether it had been entered. After a discussion with Special Examiner William Dixon, Examiner Brown called the undersigned and indicated that the Notice of Appeal was filed in error and as such the present application became abandoned as of February 28, 2002, the six-month deadline for filing a response to the Official Action (Paper No. 16). The Examiner recommended that the undersigned contact the Petitions Office to determine the appropriate course of action to revive the application and advance prosecution of this application.

On March 4, 2002, the undersigned discussed the factual situation in this case with Beth Dayoan in the Petitions Office, who indicated that this petition be filed with the appropriate response.

The undersigned submits that, in view of the facts set forth above, the delay in filing an appropriate response within the time set by the Office Action mailed August 31, 2001 (Paper No. 16) was unintentional. The undersigned further submits that to rectify the

situation, a course of action to rectify this situation was undertaken immediately, whereby this petition is believed to be timely filed.

Additionally, in view of the improper filing of the Notice of Appeal, a refund of the Notice of Appeal fee of \$320.00 submitted on January 31, 2002 is requested. The refund may be directed to Deposit Account No. 15-0030.

The required fee for this petition under 37 CFR 1.137(b) is attached.

Accordingly, the undersigned requests that this petition be GRANTED and the attached response be forwarded to the Examiner for consideration.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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